

# MICHIGAN SUPREME COURT



## *Office of Public Information*

contact: Marcia McBrien | (313) 972-3219 or (517) 373-0129

FOR IMMEDIATE RELEASE

### **ENVIRONMENTAL CLEAN-UP DISPUTE BEFORE MICHIGAN SUPREME COURT IN ORAL ARGUMENTS NEXT WEEK**

LANSING, MI, January 9, 2003 – Six cases, including a dispute in an environmental clean-up matter, will come before the Michigan Supreme Court next week for oral argument.

At issue in *Attorney General v. Woodland Oil Company* is whether a six-year statute of limitations bars the state's efforts to recover environmental response activity costs from two companies, which allegedly spilled oil on a site in Frankfort.

Also before the Court is a contract dispute (*Klapp v. United Insurance Group Agency*) and a no-fault auto insurance case (*Rednour v. Hastings Mutual Insurance Company*). In addition, the Court will consider whether a plaintiff was acting as a real estate broker when it allegedly helped the defendant purchase another company's assets (*G.C. Timmis & Company v. Guardian Alarm Company*).

The Court will also hear two criminal cases (*People v. Aliakbar* and *People v. Babcock*). Both cases, which will be heard together, involve challenges to criminal sentences that depart from the state's statutory sentencing guidelines.

Court will be held **January 14 and 15** in the Supreme Court Room on the sixth floor of the Michigan Hall of Justice. Court will convene at **9:30 a.m.** each day.

*(Please note: The summaries that follow are brief accounts of complicated cases and might not reflect the way in which some or all of the Court's seven Justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their cases. For further details about these cases, please contact the attorneys.)*

#### **Tuesday, January 14**

##### ***Morning session only***

**KLAPP v. UNITED INSURANCE GROUP AGENCY (case no. 119175-6)**  
**Attorney for plaintiff Craig A. Klapp: James Moskal/616.752.2000**

**Attorney for United Insurance Group Agency:** Brian H. Rolfe/248.357.6610

**At issue:** Did the Michigan Court of Appeals overlook part of the contract in this case?

**Background:** The plaintiff, Craig Klapp, worked as an insurance agent for defendant United Insurance Group Agency (UIG). In January 1994, Klapp briefly went into another line of business, then returned to work for UIG. In 1997, Klapp stopped selling insurance and later sued UIG. He claimed that UIG owed him, but had failed to pay, renewal commissions. Under the contract vesting schedule, an agent with seven years of service would have 100 percent of the agent's renewals vested, Klapp contended. UIG moved to dismiss the case, arguing that Klapp had not "retired" as defined by the contract and so was not entitled to renewal commissions. The contract states that "Retirement is understood to be disengagement from the insurance industry. Vestment for retirement is age 65 or 10 years of service whichever is later." Van Buren County Circuit Judge Paul E. Hamre denied UIG's motion and the case went to trial, resulting in a jury verdict for Klapp. In an unpublished per curiam opinion, the Court of Appeals reversed and remanded the case to the trial court, directing the trial judge to enter a judgment in favor of UIG. The Court of Appeals ruled that the contract was unambiguous and that Klapp was not entitled to renewal commissions because he did not "retire" as that term was defined in the contract. Klapp moved for rehearing, arguing that the Court of Appeals had ignored a section of the contract which was inconsistent with the panel's interpretation. The Court of Appeals denied the motion. Klapp appeals.

**PEOPLE v. ALIAKBAR (case no. 120256)**

**Prosecuting attorney:** Jason W. Williams/313.833.4559

**Attorney for defendant Ntuku Aliakbar:** Chari K. Grove/313.256.9833

**At issue:** The defendant was sentenced to 7 ½ to 20 years in prison for arson of his family's home; state sentencing guidelines call for 15 to 25 months. At sentencing, the trial judge noted that the defendant had committed other, earlier acts against his family. Defendant claims that the sentence departure is not warranted. He contends that he is entitled to resentencing because the trial judge did not set forth substantial and compelling reasons for such a large departure from the sentencing guidelines.

**Background:** The defendant, Ntuku Aliakbar, was convicted of arson of a building. His brother testified that, in September 1999, Aliakbar threw a lit bottle at his family's home, which set fire to the house before Aliakbar's brother put out the flames with a fire extinguisher. Before sentencing, Aliakbar's mother testified that he had repeatedly vandalized family vehicles and had made one prior arson attempt. She stated that the family was "in fear of our lives" and that they slept in shifts, keeping watch in case Aliakbar came to the house. In sentencing Aliakbar, Wayne County Circuit Judge Leonard Townsend cited "the exposure to danger that these people have been put through, and the fact that they're living in fear of this matter continuing." The judge went on to say that he rejected the sentencing guidelines because the guidelines do "not truly reflect the gravity of this offense." He sentenced Aliakbar to 7 ½ to 20 years in prison. The sentencing guidelines for arson of a building call for 15 to 25 months. The Court of Appeals affirmed Aliakbar's sentence in an unpublished memorandum opinion. In so doing, the panel noted that the sentencing guidelines permit a judge to depart from the guidelines if there is a "substantial and compelling reason" to do so. "Where defendant engaged in a continuing pattern of criminal activity ... there was a substantial and compelling reason for departing from the fifteen to twenty-five month guideline range," the Court of Appeals stated. On appeal, Aliakbar

argues in part that the sentence was not justified because the guidelines, which assessed points for possession of an incendiary device and additional points for a pending case, adequately reflect the seriousness of Aliakbar's offense. Aliakbar also argues that the departure was unjustified because no one was injured by his actions.

**PEOPLE v. BABCOCK (case no. 121310)**

**Prosecuting attorney:** Jerrold Schrottenboer/517.788.4283

**Attorney for defendant Gerald Lee Babcock:** Bruce A. Barton/517.780.0800

**Attorney for amicus curiae Criminal Defense Attorneys of Michigan:** Jacqueline J. McCann/313.256.9833

**At issue:** In a sex abuse case, were there substantial and compelling reasons for the sentencing judge to impose a more lenient sentence – probation and some jail time – than the three-year minimum prison term called for by statutory guidelines? Also at issue is the standard of review appellate courts should use for reviewing cases in which trial courts depart from sentencing guidelines.

**Background:** The defendant, Gerald Babcock, was 24 years old when he sexually abused his 12-year-old cousin. Babcock was charged with one count of first-degree criminal sexual conduct. He

pled guilty to two counts of second-degree criminal sexual conduct. The statutory guidelines provide that the minimum sentence range for that offense is 36 to 71 months. Jackson County Circuit Judge Alexander Perlos placed Babcock on three years' probation, imposed a year in jail, and suspended the sentence after 60 days. The judge stated that he thought the statutory guidelines were "too harsh." He also noted that Babcock had no prior felony convictions, and stated that Babcock could receive treatment in the community with the goal of rehabilitating him. The prosecutor appealed. In a published decision, the Court of Appeals vacated the sentence and remanded the case. The trial judge's reasons were not compelling so as to justify a sentence that was more lenient than the guidelines range, the appellate panel stated. On remand, Judge Perlos again gave Babcock probation. The judge cited Babcock's ill health, the fact that he was the primary caretaker of a mentally and physically disabled brother, and the fact that Babcock complied with probation conditions during the interval between sentence and resentencing. The judge also stated that society would be better served by probation. The prosecutor again appealed, but the Court of Appeals affirmed the trial court's ruling. The court said it was bound to affirm the sentence because it could not find that the trial judge had abused his discretion. The prosecutor appeals.

**Wednesday, January 15**

***Morning session only***

**REDNOUR v. HASTINGS MUTUAL INSURANCE COMPANY (case no. 119187)**

**Attorney for plaintiff Nickolas Rednour:** James A. Iafrate/734.994.0200

**Attorneys for defendant Hastings Mutual Insurance Company:** J. Mark Cooney, Keith P. Felty/248.355.4141

**At issue:** While changing a tire on a companion's vehicle, the plaintiff was hit by a drunk driver.

At the moment of impact, the plaintiff was standing six inches away from the vehicle. The accident occurred in Ohio. Under Michigan's no-fault law, the plaintiff would not be eligible for personal injury protection benefits because he was not an "occupant" of the vehicle. If the no-fault insurance policy defines "occupying" more broadly than the statute does, can the plaintiff recover under the policy language? The defendant insurance company disputes that the policy's definition of "occupying" is broader than the definition of "occupant" in the statute.

**Background:** Nickolas Rednour was driving a vehicle owned by another person and insured by Hastings Mutual Insurance Company. A tire went flat, and Rednour began changing the tire. As he walked toward the back of the vehicle, he was struck by a drunk driver and pinned between the two vehicles. The accident occurred in Ohio. When Rednour was hit, he was only six inches away from the insured vehicle. Under Michigan's no-fault law, personal injury protection (PIP) benefits are available to several categories of persons injured in vehicle accidents outside Michigan, including "an occupant of a vehicle involved in the accident whose owner or registrant was insured." Rednour sued Hastings Mutual after it refused to pay PIP benefits under its no-fault policy. Hastings Mutual moved to dismiss the case, arguing that Rednour was not eligible for PIP benefits because he was not an "occupant" of the insured vehicle when he was injured. Rednour responded in part that Hastings Mutual was bound to provide PIP benefits under the definition of "occupying" in its no-fault policy. The policy defines "occupying" as "in, upon, getting in, on, out or off." That definition is broader than the Michigan statute's "occupant" definition, Rednour argued. Because he was so close to the car right before he was hit, and because he was immediately pinned against the vehicle, he was "occupying" the car, Rednour contended. Oakland County Circuit Judge J. Phillip Jourdan dismissed the case, finding that the policy was not broader than the statute. The Court of Appeals reversed in a published per curiam opinion, holding that the definition of "occupying" in the defendant's policy was broader than the meaning of the term "occupant" in the statute. "Plaintiff was within six inches of the vehicle ... so as to be pinned against it upon impact and surely within the context of 'in, upon, getting in, on, out or off' the vehicle," the Court of Appeals stated. Hastings Mutual appeals.

**G. C. TIMMIS & COMPANY v. GUARDIAN ALARM COMPANY (case no. 120035)**

**Attorney for plaintiff G.C. Timmis & Company:** David V. Timmis/248.312.2800

**Attorney for defendant Guardian Alarm Company:** Barry M. Rosenbaum/248.353.7620

**Attorney for amicus curiae Michigan Association of Realtors:** Gregory L. McClelland, Marc D. Matlock/517.482.4890

**At issue:** Was the plaintiff acting as a real estate broker when it allegedly helped the defendant purchase the assets of another company?

**Background:** G. C. Timmis & Company is a registered investment advisor with the Securities and Exchange Commission and a broker-dealer member of the National Association of Security Dealers. Timmis & Company claims that its director and principal, Gerald C. Timmis, III, and defendant Guardian Alarm Company entered into an oral agreement in August 1997. According to the plaintiff's complaint, under the terms of the oral agreement, Timmis & Company was to assist Guardian Alarm in the "successful purchase of a security monitoring agreement from MetroCell Security," for which Guardian would pay a fee to Timmis & Company. Timmis & Company further claimed that Guardian Alarm did purchase a security monitoring agreement from MetroCell Security for \$1.4 million, but did so in a clandestine way to avoid Guardian's alleged contractual commitment to Timmis & Company. Guardian Alarm denies that the

agreement existed and that it acted to avoid any obligation. Guardian Alarm moved to dismiss. Guardian Alarm argued that, under Michigan's real estate brokers licensing act, Timmis & Company was required to be a licensed real estate broker before negotiating the purchase of a business or business opportunity. The act provides in part that an unlicensed person "shall not maintain an action ... for the collection of compensation for the performance of an act or contract for which a license is required by this article." The act defines "real estate broker" in part as one "who ... negotiates the purchase or sale or exchange of a business, business opportunity, or the goodwill of an existing business for others." Timmis & Company responded that it was not required to be licensed under the act because it was seeking compensation for investment banking services, not for assisting Guardian Alarm in negotiating the purchase of a business. Oakland County Circuit Judge Jessica Cooper denied the defendant's motion, but the Court of Appeals reversed in a 2-1 published opinion. The Court of Appeals concluded that because the plaintiff's activity constituted "negotiat[ions] [for] the purchase or sale or exchange of a business," it was required to have a real estate broker's license. Because the plaintiff had no license at the time it engaged in the negotiations on defendant's behalf, plaintiff's claim failed as a matter of law, the Court of Appeals stated. The plaintiff appeals.

**ATTORNEY GENERAL AND DEPARTMENT OF ENVIRONMENTAL QUALITY v. WOODLAND OIL COMPANY, INC. AND BAY OIL COMPANY, INC. (case no. 120139)**

**Attorney for plaintiffs:** Kathleen L. Cavanaugh/517.373.7540

**Attorneys for defendants:** Michael H. Perry/517.482.5800, John A. Yeager/517.351.6200

**At issue:** Does a six-year statute of limitations bar the state's suit to recover environmental response activity costs from two companies, which allegedly spilled oil on a site in Frankfort?

**Background:** Defendants Woodland Oil Company and Bay Oil Company allegedly released petroleum products onto a site in Frankfort. In 1989, Woodland Oil proceeded with a soil excavation plan, approved by the DEQ, to remove contaminated soil from the site and replace it with clean fill dirt. The DEQ discovered further areas of contamination. The Michigan Attorney General and the DEQ made efforts to clean up the site and sued the defendants to recover response activity costs and fines due to the oil spills. Ingham County Circuit Judge William E. Collette dismissed the suit, concluding that the statute of limitations had expired. Ultimately, the Court of Appeals affirmed the dismissal on statute of limitations grounds, but for different reasons. In an unpublished opinion, the court said that Woodland Oil's 1989 excavation constituted "remedial action" under the Natural Resources and Environmental Protection Act (NREPA). The statute allows recovery of response activity costs, but only if the lawsuit is brought within six years of initiation of remedial action selected or approved by the state, the panel said. As a result, the suit was barred by the statute of limitation, the Court of Appeals concluded. The plaintiffs appeal.

– MSC –